THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.11279 of 1998

Dated : 23.04.2007

Between:

M/s Vahini Builders, rep., by its Managing Partner
P.Venkateswara Rao S/o Basavalingam and others.

… **PETITIONERS**

And:

Commissioner and Inspector General of
Registration and Stamps, A.P., Hyderabad
and others.

….**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.11279 of 1998

ORDER:

This writ petition is filed aggrieved by the action of respondents 2 and 3 in refusing to register the documents of the petitioners, based on the proceedings of the first respondent dated 04.12.1997, under which the second respondent was directed to instruct the third respondent not to admit the documents for registration in respect of the lands at Kukatpally Municipality.

Petitioners are builders/developers. They alleged to have constructed flats in various extents of land in Sy.No.166 of Kukatpally, after obtaining permission from the Hyderabad Urban Development Authority. Thereafter they presented the sale deeds executed by them i n favour of the intending buyers for registration before the third respondent, but the third respondent refused to receive the same on

the pretext that the second respondent instructed him not to accept the sale deeds for registration in respect of the lands at Kukatpally. Now their grievance is that they have invested huge amounts for construction of flats and if they are not permitted to sell them by duly executing sale deeds, they will suffer irreparable loss. Hence, this writ petition.

Counter is filed on behalf of the respondents stating that the Special Officer and Competent Authority under Urban Land (Ceiling and Regulation) Act, 1976 (for short "the ULC Act") addressed a letter dated 16.08.1997 to the first respondent stating that the land in question and other lands were sold to M/s Bhagyanagar Co-operative Housing Society Limited and M/s Addgutta Co-operative Housing Society Limited in contravention of the conditions imposed in 2(O) certificate issued by his office, that the Government constituted a House Committee to enquire into the illegal sale of lands, which is in progress, and therefore, requested the first respondent to instruct the authorities concerned not to register any document in respect of the lands at Kukatpalli. Pursuant to the said letter, the first respondent, exercising powers Section 69 of the Registration Act, 1908 (for short "the Act"), directed the second respondent to instruct the third respondent not to entertain any document for registration in respect of the lands at Kukatpalli. Therefore, there is no illegality in the action of the respondents.

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue.

During the course of arguments learned Government Pleader has drawn my attention to a judgment of a Division Bench of this Court in W.P.Nos.1774 of 1992 and batch, dated 09.03.1993, wherein, a Division Bench of this Court, in identical circumstances, upheld the powers conferred on the Inspector General for issuance of circulars to the subordinate officers under Section 69 of the Act.

Per contra, learned counsel appearing for the petitioners relied on the judgment of the Apex Court in ***Maharao Saheb Shri Bhim Singhji v Union of India,***[1] wherein, it was held that the circular issued by the authority under Section 27(1) of the ULC Act stating that unless and until clearance is received from the Special Officer and Competent Authority under the ULC Act, the sale deed shall not be registered is wholly without power, and therefore, Section 27(1) of the ULC Act was struck down holding that the restriction on transfer of urban or urbanisable land with a building or a portion only of such building, which is within the ceiling area, is violative of Article 14 of the Constitution of India, and consequently held that such property will therefore be transferable without the constraints mentioned in sub-section (1) of Section 27 of the ULC Act.

Having regard to the fact that a Division Bench of this Court, in a batch of writ petitions referred to above, has taken the view that the Inspector General has power to issue circulars invoking the powers under Section 69 of the Act, the contention put forth by the learned counsel for the petitioners that issuance of the said circular is without jurisdiction cannot be accepted. However, without deciding as to whether the restriction imposed under Section 27(1) of the ULC Act applies to the flats constructed by the petitioners or not, it is desirable that the third respondent-Sub-Registrar, to whom the said sale deeds are presented, can be directed to pass appropriate orders as to whether the sale deeds presented by the petitioners can be registered or not. If he passes an order refusing to register them, petitioners are at liberty to file an appeal under Section 72 of the Act.

In the light of the foregoing discussion, without going into the merits of the case, this writ petition is disposed of with a direction to the Sub-Registrar, Kukatpalli – third respondent herein, to receive the documents from the petitioners and pass appropriate orders.

Petitioners are at liberty to bring to the notice of the third respondent as to whether he can register their documents or not, without recourse to Section 27 of the ULC Act. There shall be no order as to costs.

23.04.2007

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[1] AIR 1981 SC 234